

If the law says you can't file a petition, you might need to file it anyway, in case somebody later says that you should've even though the law says you couldn't

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It sounds like a scene from the movie *Brazil*, but in fact it's the law.

Let's rewind a bit. The introduction is a bit technical, but I'll try to keep it short.

There is a legal filing known as a *habeas petition* and another known as a *petition for review*. There are rules regarding what each one covers and the deadlines for filing them. Prior to 2005, there was no deadline for habeas petitions, but you had to file your petition for review within 30 days of whatever it was the government did that you wanted to object to. In 2005, Congress passed (and the President signed) a law which recategorizes what the two types of filings covered, and many claims that had fallen under the habeas petition have been reclassified as requiring a petition for review instead.

This change in the rules creates a gap in coverage because Congress forgot to include a grandfather clause (or, for computer geeks, a "smooth migration plan"): What if, at the time the new law took effect, the thing you want to complain about was reclassified as requiring a petition for review, but it took place more than 30 days ago? You wake up one morning and somebody tells you, "Hey, there's a new law today. You just lost your right to respond."

What you do, then, is file a lawsuit challenging the new rules. And then two years later, the Third Circuit Court hears your case and rules that, yes, you're right, the law that Congress passed is unconstitutional (a violation of Section 9, Clause 2, known commonly as the *Suspension Clause*) because it denied you the opportunity to file a claim.

And now here's the weird part.

Instead of saying, "And therefore we strike down this part of the law as unconstitutional," the court says "And therefore we will retroactively rewrite the law so it is constitutional again (saving Congress and the President the trouble of having to do it themselves), and oh lookie here, according to this new law we just made up, you did have a constitutionally guaranteed opportunity to file your petition, but it expired two years ago."

In other words, what you should have done in 2005 was hire a psychic, who would then instruct you to spend thousands of dollars hiring an attorney to draft and file a petition which, according to the law, *you were legally barred from filing*, in anticipation of the courts (two years later) rewriting the law in order to make that filing legal again. And then when you file your petition, you have to convince the court to accept it, explaining that *yes, I know that I cannot legally file this petition, but a psychic told me to do it*.

You can read the court's decision yourself. (Despite the connotations associated with the term *legalese*, court decisions are actually quite readable. You just have to skip over the complicated footnotes.)

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